

Garlock Equipment Company and District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO. Case 18-CA-6846

August 24, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN

Upon a charge filed on September 8, 1980, by District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, herein called the Union, and duly served on Garlock Equipment Company, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 18, issued a complaint on October 17, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on May 15, 1980, following a Board election in Case 18-RC-12623, Garlock Employees Committee (GEC) was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; that on July 11, 1980, pursuant to petitions filed in Cases 28-AC-38 and 18-AC-40, the Regional Director amended the Certification of Representative by substituting the Union in place of GEC;¹ and that, commencing on or about July 25, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, and to furnish the Union relevant bargaining information, although the Union has requested and is requesting it to do so. On October 30, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On November 21, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on December 4,

1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and in its response to the Notice To Show Cause, Respondent admits its refusal to bargain and to provide the requested information, but contends that it was not required to do either because the Union was not properly certified. In this regard Respondent argues that the amendment to GEC's certification so as to substitute the Union for GEC as the exclusive representative was improper, and further contends that the Regional Director erred by not holding a hearing on the petitions to amend the certification and that it is now entitled to a hearing.

Review of the record herein, including the record in Cases 18-RC-12623, 18-AC-38, and 18-AC-40, discloses that, pursuant to a Stipulation for Certification Upon Consent Election, an election was held on May 8, 1980, which resulted in 49 votes for and 4 votes against GEC, which was duly certified. Respondent did not and does not contest the validity of this certification. On July 11, 1980, based on two petitions to amend the certification and a showing, in support of those petitions, that by a secret-ballot election among all the employees in the certified bargaining unit the employees voted, 59 to 3, to have GEC affiliate with the Union, the Regional Director issued his Decision and Amendment of Certification in which he ordered that the certification issued in Case 18-RC-12623 be amended to substitute the Union for GEC as the certified exclusive representative of the employees in the appropriate bargaining unit.

On July 23, 1980, Respondent filed with the Board a timely request for review of the Regional Director's Decision and Amendment of Certification in which it argued that the petitions for amendment of certification raised a question concerning representation that could be resolved only through a Board election and that, in the alternative, the non-Board affiliation election was not carried out with proper procedural safeguards to ensure due process and a truly representative result. On August 8, 1980, the Board denied the re-

¹ Official notice is taken of the record in the representation proceeding, Cases 18-RC-12623, 18-AC-38, and 18-AC-40, as the term "record" is defined in Secs. 102.68 and 102.69(g) of the Board's Rules and Regulations, Series 8, as amended. See *LTV Electrosystems, Inc.*, 166 NLRB 938 (1967), enf'd. 388 F.2d 683 (4th Cir. 1968); *Golden Age Beverage Co.*, 167 NLRB 151 (1967), enf'd. 415 F.2d 26 (5th Cir. 1969); *Inter-type Co. v. Penello*, 269 F.Supp. 573 (D.C.Va. 1967); *Follett Corp.*, 164 NLRB 378 (1967), enf'd. 397 F.2d 91 (7th Cir. 1968); Sec. 9(d) of the NLRA, as amended.

quest for review as raising no substantial issues warranting review.

It is well settled that in the absence of newly discovered or previously unavailable evidence or special circumstances a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues which were or could have been litigated in a prior representation proceeding.²

All issues raised by Respondent in connection with the validity of the amendment of certification were or could have been litigated in the prior representation proceeding, and Respondent does not offer to adduce at a hearing any newly discovered or previously unavailable evidence, nor does it allege that any special circumstances exist herein which would require the Board to reexamine the decision made in the representation proceeding. We therefore find that Respondent has not raised any issue which is properly litigable in this unfair labor practice proceeding with regard to the refusal-to-bargain allegation.³ Accordingly, we grant the Motion for Summary Judgment with respect thereto.

In addition to its refusal to bargain, Respondent also refused to provide information requested by the Union which the Union deemed necessary and relevant for the purpose of collective bargaining.⁴ The Board has long held with court approval that the collective-bargaining duties imposed on an employer by Section 8(a)(5) of the Act include the obligation to provide its employees' bargaining representative with information which is relevant and necessary to collective bargaining.⁵ We find that the information requested by the Union clearly constitutes information which has a direct bearing on the negotiation of wages, hours, and other terms and conditions of employment. As the information sought clearly encompasses matters which are mandatory subjects of bargaining, it is precisely that type of information which employers are required to provide to enable unions to bargain intelligently and fulfill their obligations as the selected repre-

sentative of the employer's employees.⁶ We therefore find that, by its refusal to provide the information which was requested by the Union, Respondent has violated Section 8(a)(1) and (5) of the Act. Accordingly, we grant the Motion for Summary Judgment on the refusal-to-provide-information allegation.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Minnesota corporation with an office and place of business in Plymouth, Minnesota, is engaged in the manufacture and nonretail sale and distribution of roofing equipment and related products. During the 12-month period ending December 31, 1979, a representative period, Respondent, in the course and conduct of its business operations, sold and shipped from its St. Louis Park, Minnesota, facility, relocated in December 1979 to Plymouth, Minnesota, products, goods, and materials valued in excess of \$50,000 directly to points outside the State of Minnesota. During the same period, Respondent purchased and received products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Minnesota.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. The Representation Proceeding

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees employed at Respondent's Plymouth, Minnesota facility; ex-

² See *Pittsburgh Plate Glass Co. v. N.L.R.B.*, 313 U.S. 146, 162 (1941); Rules and Regulations of the Board, Secs. 102.67(f) and 102.69(c).

³ In his Decision and Amendment of Certification in Cases 18-AC-38 and 18-AC-40, the Regional Director relied on *Amoco Production Company*, 239 NLRB 1195 (1979), and *Seattle-First National Bank*, 241 NLRB 751 (1979), for the proposition that the affiliation vote taken here was an internal union matter. As the affiliation vote was open to all employees in the bargaining unit, and as the due-process requirements were satisfied, we need not rely on *Amoco* or *Seattle* in reaffirming the Regional Director's finding that the affiliation vote was valid for the purpose of making the Union the collective-bargaining representative.

⁴ The Union sought information on the employees' seniority, and ages, classifications, and rates of pay, information on work rules, incentive systems and subcontracting, and various information on the employees' pension, profit-sharing and insurance plans.

⁵ *N.L.R.B. v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967).

⁶ See *Dynamic Machine Co.*, 221 NLRB 1140 (1975), and cases cited therein at fn. 14.

cluding all office clerical employees, managerial employees, professional employees, engineering department employees, sales employees, guards and supervisors as defined in the Act.

2. The certification

On May 8, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 18, designated GEC as their representative for the purpose of collective bargaining with Respondent.

GEC was certified as the collective-bargaining representative of the employees in said unit on May 15, 1980. The Union was duly substituted as the certified collective-bargaining representative on July 11, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about July 22, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit, and to furnish it with relevant and necessary bargaining information concerning the employees in the above-described unit. Commencing on or about July 25, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit, and to furnish the Union with relevant and necessary bargaining information concerning said employees.

Accordingly, we find that Respondent has, since July 25, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and refused to furnish the Union with relevant and necessary bargaining information, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and ob-

structing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Garlock Equipment Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All full-time and regular part-time production and maintenance employees employed at Respondent's Plymouth, Minnesota facility; excluding all office clerical employees, managerial employees, professional employees, engineering department employees, sales employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 11, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 25, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of

Respondent in the appropriate unit, and to furnish the Union with relevant and necessary bargaining information concerning said employees, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid conduct, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Garlock Equipment Company, Plymouth, Minnesota, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive bargaining representative of its employees in the following appropriate unit:

All full-time and regular part-time production and maintenance employees employed at Respondent's Plymouth, Minnesota facility; excluding all office clerical employees, managerial employees, professional employees, engineering department employees, sales employees, guards and supervisors as defined in the Act.

(b) Refusing to furnish the Union with relevant and necessary bargaining information requested by it concerning the employees in the above-described unit.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment, and, if

an understanding is reached, embody such understanding in a signed agreement.

(b) Upon request, furnish the above-named labor organization with relevant and necessary bargaining information concerning the employees in the appropriate unit.

(c) Post at its plant in Plymouth, Minnesota, copies of the attached notice marked "Appendix."⁷ Copies of said notice, on forms provided by the Regional Director for Region 18, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 18, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

⁷ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with District Lodge No. 77, International Association of Machinists and Aerospace Workers, AFL-CIO, as the exclusive representative of the employees in the bargaining unit described below.

WE WILL NOT refuse to provide the above-named labor organization with relevant and necessary information requested by it concerning the employees in the appropriate unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and condi-

tions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All full-time and regular part-time production and maintenance employees employed at our Plymouth, Minnesota facility; excluding all office clerical employees, managerial employees, professional employees, engineering department employees, sales em-

ployees, guards and supervisors as defined in the Act.

WE WILL, upon request, provide the above-named labor organization with relevant and necessary bargaining information concerning the employees in the appropriate unit.

GARLOCK EQUIPMENT COMPANY